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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO,
et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States, et al.,

Defendants.

Case No. 3:25-cv-03698-SI

**PLAINTIFFS' NOTICE AND OBJECTION
TO DEFENDANTS' PARTIAL NON-
COMPLIANCE WITH COURT ORDER
RE: DISCOVERY**

1 Plaintiffs submit this notice and request the Court's assistance in obtaining compliance from
 2 Defendants with respect to this Court's May 15, 2025 Order Re: Production of Certain Discovery
 3 Documents (ECF 109). Specifically, Defendants have not fully complied with this Court's Order to
 4 submit and provide to Plaintiffs "(2) the versions of ARRPs approved by OMB and/or OPM." *Id.*
 5 Defendants initially represented to this Court and Plaintiffs that there were no such documents, but
 6 after meeting and conferring with Plaintiffs, have backtracked on that representation.

7 The relevant history of this specific dispute is as follows:

8 On May 9, 2025, this Court granted expedited discovery pursuant to Rule 26 and ordered
 9 Defendants to disclose certain documents including "Agency RIF and Reorganization Plans"
 10 ("ARRPs") created pursuant to Executive Order No. 14210 ("EO") and OMB and OPM's February
 11 26, 2025 Memorandum implementing that EO. ECF 85 at 41-42.

12 On May 11, 2025, Defendants filed a Motion for Protective Order or in the Alternative
 13 Reconsideration and Request for Immediate Administrative Stay (ECF 88). In support of that
 14 Motion, Defendants submitted a Declaration from an OMB official asserting that "[n]othing in an
 15 ARRP, or its review or approval by OPM or OMB, binds the agency to any particular course of
 16 action." Billy Decl. ¶5 (ECF 88-1). Plaintiffs agreed that Defendants' obligation to produce the
 17 documents ordered on May 9 should be postponed pending this Court's resolution of Defendants'
 18 motion (ECF 90), which this Court then ordered (ECF 92). Pursuant to the court-ordered briefing
 19 schedule, Plaintiffs then opposed the Motion, including by arguing that ARRPs have, in fact, been
 20 approved by OMB and OPM (ECF 96).

21 On May 15, 2025, this Court issued an Order, in which it described the parties'
 22 characterizations of the ARRPs in "starkly different terms." ECF 109 at 4. The Court ordered:

23 By Monday, May 19, 2025 at 12:00 p.m. (PDT), defendants shall submit to the Court
 24 for *in camera* review the following documents for *four federal agency defendants*¹⁵,
 25 (1) the versions of ARRPs submitted to OMB and OPM and (2) the versions of ARRPs
 26 approved by OMB and/or OPM. Plaintiffs shall designate two of the agencies for which
 27 the ARRPs are to be produced and shall provide those agency names to defendants by
 10:00 a.m. (PDT) on Friday, May 16, 2025. Defendants may designate the other two
 agencies for which it will provide ARRPs.

28 By Monday, May 19, 2025 at 12:00 p.m. (PDT), defendants will also provide the same
 ARRPs to plaintiffs' counsel, but plaintiffs' counsel may not share the plans or their
 PLS.' NOT. & OBJ. TO DEFS.' PARTIAL NONCOMPLIANCE, NO. 3:25-cv-03698-SI

1 contents with their clients or any third parties unless or until the Court orders otherwise.

2 *Id.*

3 On May 19, 2025 Defendants timely responded by submitting documents to the Court
4 responding to the first, but not the second category of documents, with an explanation, provided both
5 to Plaintiffs and to the Court, that included the following factual representations:

6 The Court's Order directed Defendants to provide, as to ARRP's for certain components:
7 "(1) the versions of ARRP's submitted to OMB and OPM and (2) the versions of ARRP's
8 approved by OMB and/or OPM." As you will observe, we have attached only one
9 version of each AARP. That is because, for these components, there is only one version.
10 **OPM and OMB have not "approved" ARRP's for these components in the sense of**
11 **formally signing off on them;** nor have they required the submission of any additional
12 versions, and these components have not submitted any other versions. **Components**
13 **do not need to receive any such "approval" from OMB and OPM, nor to wait for**
14 **input from OMB or OPM, before they begin work on further studying and**
15 **potentially implementing the proposals and recommendations set forth in their**
16 **submitted ARRP's.**

17 Leonard Decl. ¶2 (emphasis added).

18 On Monday, May 19, 2025, Plaintiffs' counsel requested further explanation of the basis for
19 the statement that there were no ARRP's in category 2 because none had been "formally sign[ed] off
20 on," and asked to meet and confer. *Id.* ¶3.

21 On Tuesday, May 20, 2025, the parties met and conferred but were unable to resolve their
22 disputes. *Id.* Defendants explained that there is only one set of ARRP's regardless of whether they
23 have been approved or not, and contrary to their earlier email, they are now not making any factual
24 representations regarding whether ARRP's have been approved. *Id.* Defense counsel declined to
25 provide further explanation for the statements in the May 19 email in which they represented to
26 Plaintiffs and the Court that OMB and OPM have not "formally" approved the ARRP's. *Id.*

27 DISCUSSION

28 Plaintiffs understand that Defendants' position is that they have fully complied with the
Court's order. Plaintiffs disagree, and understand the Court's order to require the production of
separate categories of documents not only because there may be different versions, but also in light of
the direct relevance of information regarding what, in fact, has been approved by OMB/OPM in
whole or in part. Defendants' initial representation to the Court that the ARRP's have not been

1 approved “in the sense of formally signing off” raises many questions, including which of the
 2 produced documents has been approved in any way, whether formally or informally, in whole or part.
 3 Plaintiffs have submitted evidence to the Court that establishes that OMB/OPM are in fact approving
 4 and disapproving these documents (including by responding in writing that certain elements of the
 5 ARRs meet expectations and others do not, and by rejecting plans that do not RIF at levels directed
 6 by OPM/OPM/DOGE, *see* ECF 36, Ex. 1). *See also* ECF 37-12 ¶24 (OMB rejected AmeriCorps
 7 ARR for not including RIF); ECF 96-1 ¶¶15-20 (OMB, OPM, and DOGE rejected NSF’s proposed
 8 ARR and required large RIFs); *id.* ¶¶6-13, Ex. 1 at 4-6 & Atts. D, I (similar, at non-defendant
 9 agency National Endowment for the Humanities).

10 Plaintiffs understand that Defendants are representing that there are no additional versions of
 11 the produced ARRs, but ask that Defendants identify whether the produced versions fall within
 12 category 2 of the Court’s order: “(2) the versions of ARRs approved by OMB and/or OPM.”
 13 Plaintiffs therefore request assistance from the Court in resolving this dispute regarding compliance,
 14 including by requiring Defendants to identify which ARRs produced to the Court have, in fact, been
 15 approved in whole or part (and in which part) by OMB or OPM, including by OMB/OPM responding
 16 that the ARRs in whole or part “meet expectations” or similar communications.

17 Respectfully submitted,

18 DATED: May 20, 2025

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